

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RAMI ABUZIYAD,

Petitioner,

v.

ORDER

17-CV-552 (MKB) (CLP)

PAUL N. GOYEA, Superintendant, Mohawk
Correctional Facility,

Respondent.

MARGO K. BRODIE, United States District Judge:

Petitioner Rami Abuziyad, proceeding *pro se*, filed the above-captioned petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that his confinement in state custody violates the United States Constitution. (Pet., Docket Entry No. 1.) Petitioner's claims arise from a judgment of conviction after a jury trial in the Supreme Court of the State of New York, Kings County, for criminal possession of stolen property in the third degree. (*Id.*) On June 20, 2019, the Court referred the petition to Magistrate Judge Cheryl L. Pollak for a report and recommendation. (Order dated June 20, 2019.) By report and recommendation dated September 20, 2019, Judge Pollak recommended that the Court deny the petition as moot, or in the alternative, procedurally barred and without merit (the "R&R"). (R&R 1, 21, 28, 30, 34, 35–37, Docket Entry No. 13.)

No party has objected to the R&R and the time for doing so has passed.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to

timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); see also *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); see also *Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R, and, finding no clear error, adopts the R&R in its entirety and denies the petition for a writ of habeas corpus. The Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c)(2). The Court certifies pursuant to 28 U.S.C. § 1915(a) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. See *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

The Clerk of Court is directed to close this case and mail a copy of this Order to Petitioner at the following address: 3521 Farrington Street, Apt. 4R, Flushing, New York, 11354.

Dated: May 22, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge